In the High Court of Judicature at Madras

Dated: 30.01.2006

Coram:

The Honourable Mr.Justice S.R.SINGHARAVELU

Civil Revision Petition (P.D.)No. 1325 of 2004
and C.M.P.No.12592 of 2004

Raoul ..
Petitioner/Respondent/Revision Petitioner

..vs..

Thierry Sandammalle .. Respondent/Petitioner/Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 11.06.2004 passed in I.A.No.32 of 2004 in HRCOP No.46 of 2003 on the file of Rent Controller at Pondicherry.

For Petitioner : Mr.VR.Shanmuganathan
For Respondent : Mr.R.Subramanian

ORDER

This Civil Revision Petition arises against the order dated 11.06.2004 in I.A.No.32 of 2004 in HRCOP No.46 of 2003 by the Rent Controller at Pondicherry, in and by which, the Rent Controller has permitted the landlady to file proof affidavit as a substitute of her statements in the chief examination. This act of accepting proof affidavit is disputed by the revision petitioner / respondent / tenant.

2. Learned counsel for the revision petitioner / tenant submitted that Rule 5 of Order 18 C.P.C. contra to Rule 4 of the same, requires evidence and not proof affidavit in appealble cases of this nature. Even if provisions of Civil Procedure Code are not applicable to Rent Control process as was so held in Sakunthala and others ..vs..A.Devi (1999 (1) M.L.J.101), Rule 13 (2) of Pondicherry Buildings (Lease and Rent Control) Rules, 1980, also requires notes of evidence.

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3. What is contained in Rule 13(2) of the Pondicherry Buildings (Lease and Rent Control) Rules, 1980 is as follows:

> 13 Procedure for the dismissal of the applications:-
>
> (2) The Controller or the authorised officer or an officer, authorised by him, as the case may be, shall give to the parties a reasonable opportunity to state their Case. He shall also record a brief note of the evidence of the parties and of the witnesses, if any, examined on either side; and upon the evidence so recorded and after consideration of any documentary evidence which may be produced by the parties, pass orders on the application".

4. Even though Civil Procedure Code may not be very much applicable for the proceedings of the Rent Controller, it is worthwhile to go into Order 18 Rule 4 and 5 to feel the impact of the amendment made in that provision to the effect that "in every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence". This amendment was made with effect from 01.07.2002 by Act 46 of 1992 and Act 22 of 2002.

5. Rule 5 of Order 18 C.P.C.deals as to how evidence shall be taken in appealable cases. That provides,

> "in cases in which an appeal is allowed, the evidence of each witness shall be-
>
> (a) taken in the language of the Court-
>
> (i) in writing by or in the presence or under the personal direction and Superintendence of the Judge, or
>
> (ii) from the dictation of the Judge directly on a typewriter; or
>
> (b) if the Judge, for reasons to be recorded, so directs, recorded mechanically in the language of the Court in the presence of the Judge"

6. Now that the order passed by the Rent Controller would be an appealable order, Rule 5 of Order 18 CPC alone would be applicable and hence, there is no question of acceptance of affidavit even in C.P.C.in cases of appealable orders. Thus it becomes clear that Order 18 Rule 5 permits not the proof affidavit in appealable cases. Rent control proceedings are summary in nature and Rule 13(2) of Pondicherry Buildings (Lease and Rent Control) Rules, 1980, permits only notes of evidence.

7. Definition of 'Evidence' as defined in HALSBURY'S LAWS OF ENGLAND, FOURTH EDITION, VOL-17, is as

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follows:

> I. Proof of facts: Evidence is the usual means of providing or disproving a fact or matter in issue. The law of evidence indicates what may properly be introduced by a party (that is, what is admissible), and also what standard of proof is necessary (that is, the quality or quantity of evidence necessary in any particular case). In short, the law of evidence governs the means and manner in which a party may substantiate his own case, or refute that of his opponent".

8. Evidence as defined in section 3(1) of Evidence Act is as follows:

> "Evidence: "Evidence" means and includes-
>
> (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;
>
> such statements are called oral evidence;
>
> (2) all documents including electronic records produced for the inspection of the Court;
>
> such documents are called as documentary evidence".

Thus, to call it as evidence, there must be a statement made before the Court by witnesses. The evidence, as described in the Indian Evidence Act, would only connote the presence of the witness before the Presiding Officer of the Court and statements made by witnesses before it.

9. All that Rule 13 of Pondicherry Buildings (Lease and Rent Control) Rules, 1980 provided is that a brief note of evidence may be sufficient; not with the entire statement of evidence of a witness is required. What is implied from this is that a substance of the statements made by the witnesses before the Court may alone be taken and not the entire text of the same. It can be interpreted that if only the entire text of the statement be made before a court is to be taken into account, then the presence of a witness may be required; and as and when rule pertaining to a procedure is satisfied with the notes of events and not the entire text of the same, the area of consideration is being narrowed only to the substance and therefore, no real text is required. In this way, the rule may be taken as permitting the filing proof affidavit instead of chief examination of a particular witness.

10. This view gets strengthened by the fact that the procedure before the Rent Controller is only summary in nature. The term 'summary proceeding' is referred to in the ADVANCED LAW LEXICON by P.Ramanatha Aiyar, 3rd Edition, 2005 (Book-4) at page 4554, as follows:

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"Proceedings have been classified as regular or summary. When a court acts or professes to act upon common-law principles, its proceedings are called regular, and not summary, however expeditiously it may act; but when a Court of common-law jurisdiction is by some law authorized to act different from the common-law mode it is called a summary proceeding, a summary proceeding being defined to be a form of trial in which the established formal course of a legal proceeding is disregarded. Summary proceedings are not, however, as might be inferred from this definition, exclusively criminal in their nature but are more often available to enforce civil rights".

Thus, it is made known that as and when departure from a common law jurisdiction is permitted, there can be a summary proceedings and the procedure for recording evidence as found in the definition of Evidence Act under the term 'evidence' need not be so followed when summary procedure is permitted and whereby departure of procedure from a common law jurisdiction is allowed.

11. The Supreme Court also dealt with the same in a case law CCI Chambers Coop.Housing Society Ltd., ..vs.. Development Credit Bank Ltd., reported in 2003(4) CTC 299, wherein it was held as follows:-

"The principal object sought to be achieved by establishing such fora is to relieve the conventional Courts of their burden which is ever-increasing with the mounting arrears and whereat the disposal is delayed because of the complicated and detailed procedure which at times is accompanied by technicalities. .... It is only when the dispute arising for adjudication is such as would require recording of lengthy evidence not permissible within the scope of a summary enquiry that a forum under the Act may ask the complainant to approach the Civil Court.....

A three-Judge Bench of this Court recently in Dr.J.J.Merchant & Others's case (supra) specifically dealt with the issue as to the guidelines which would determine the matter being appropriately dealt with by a forum under the Act or being left to be heard and decided by a Civil Court.... A forum under the Act is entitled, and would be justified, in evolving a procedure of its own and also by effectively controlling the proceedings so as to do away with the need of a detailed and complicated trial and arrive at a just decision of the case by resorting to the principles of natural justice and following the procedure consistent with the

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principles thereof, also making use of such of the powers of Civil Court as are conferred on it....

12. From the above discussion, it is made clear that what is permissible under Rule 13 of Pondicherry Buildings (Lease and Rent Control) Rules, 1980, is only a notes of events of evidence and not exactly the text of evidence. The rent control proceedings are permitted to be held in summary procedure, which would indicate the departure from the common law jurisdiction. Rent Controllers may accept proof affidavit from witnesses so as to form it as chief examination and subject the witnesses straight to cross examination by the other side, after serving them a copy of the proof affidavit, This may minimise the work and time and take the optimal utility of a procedure recognised as a departure from common law jurisdiction and named as summary in nature.

13. Accepting the affidavit from the landlady, of course with a liberty of subjecting herself for cross examination by the other side in person before the Court, is of no error. I do not find any illegality in the order passed by the Rent Controller.

14. For the reasons stated above, the civil revision petition fails and is dismissed. No costs. Consequently, connected C.M.P.is closed.

gl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
The Rent Controller,
Pondicherry.

+ one cc to Mr. VR. Shanmuganathan, ADvocate sr no. 3746

JSK(CO)
NM(06.02.2006)

Pre-delivery Order in
Civil Revision Petition
(P.D.) No.1325 of 2004

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